

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

AMERICAN ITALIAN PASTA COMPANY)
)
)
Plaintiff,)
)
)
v.) No. 02-0594-CV-W-SOW
)
)
NEW WORLD PASTA COMPANY)
)
)
Defendant.)

ORDER

Before the Court are defendant's Objections to and Motion to Strike Inadmissible Evidence (Doc. #51), plaintiff's Suggestions in Opposition, and defendant's Reply. Defendant asks the Court to strike the report of William M. Weilbacher and the affidavit of Timothy S. Webster. For the reasons stated herein, defendant's motion is denied.

Defendant relies on Federal Rule of Civil Procedure 56(e) in asking the Court to strike the report of William M. Weilbacher and the affidavit of Timothy S. Webster. Federal Rule of Civil Procedure 56(e) states, in relevant part, "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."

Defendant argues that the Court should strike the report of William M. Weilbacher because it "consists entirely of speculation, conjecture, and bottom line conclusions unsupported by any evidence." Plaintiff has offered Mr. Weilbacher as an expert witness in accordance with Federal Rules of Evidence 702 and 703. It is apparent to the Court that Mr. Weilbacher is qualified to testify as an expert witness in the field of market research. In the opinion proffered by plaintiff, Mr. Weilbacher evaluates the market research study conducted by Dr. Yoran Wind, defendant's

witness. Mr. Weilbacher personally reviewed Dr. Wind's study and has produced an opinion questioning the methodology and the analysis of the data received in Dr. Wind's study as well as whether that data supports Dr. Wind's conclusions. Such evidence is relevant and admissible. Therefore, the Court will not strike Mr. Weilbacher's report.

Next, defendant asks the Court to strike the affidavit of Timothy S. Webster arguing that it contains inadmissible conclusions, hearsay, and irrelevant statements. Mr. Webster is the President and CEO of plaintiff AIPC. Mr. Webster's affidavit contains certain statements of fact based upon his personal knowledge as the President and CEO of AIPC. Although the affidavit does contain certain statements that are not relevant to the issues before the Court in the pending motion for summary judgment, as well as some conclusory and argumentative assertions, the Court will not strike the affidavit. Rather, the Court will allow it to remain a part of the record and will consider only those portions of the affidavit that are relevant and admissible in ruling on the pending motion for summary judgment.

For the reasons stated above, it is hereby
ORDERED that defendant's Objections to and Motion to Strike Inadmissible Evidence
(Doc. #51) is denied.

/s/Scott O. Wright
SCOTT O. WRIGHT
Senior United States District Judge

Dated: 2-18-03